

>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
PLEASE BE SEATED.

>> MORNING.

BOTH OF YOU, I'M SORRY, THE NEXT  
CASE ON THE DOCKET WILL BE  
FRANKLIN VERSUS STATE.

>> THANK YOU, URN.

MY NAME IS NADA CAREY,  
REPRESENTING MR. FRANKLIN.  
THIS IS A DEATH PENALTY CASE.  
FRANKLIN WAS AN INMATE AT  
COLUMBIA CORRECTIONAL  
INSTITUTION.

HE WAS CONVICTED MURDERING  
REUBEN THOMAS A CORRECTIONAL  
OFFICER.

WE RAISED SIX ISSUES IN THE  
BRIEF.

I'D LIKE TO DISCUSS, OR ADDRESS  
THREE OF THOSE HERE TODAY.

THE PROPRIETY OF THREE OF THE  
AGGRAVATING FACTORS.

THE COLD, CALCULATED,  
PREMEDITATED AGGRAVATOR, THE  
COMMITTED TO DISRUPT OR HINDER  
LAW ENFORCEMENT OR GOVERNMENTAL  
FUNCTION, AND THE LEO  
AGGRAVATOR.

THE VICTIM WAS A LAW ENFORCEMENT  
OFFICER IN THE PERFORMANCE OF  
HIS DUTIES.

TURNING FIRST TO THE CCP  
AGGRAVATOR, THIS AGGRAVATOR IS,  
AS THE COURT'S AWARE, REQUIRES A  
MORE METHODOICAL, MORE ANALYTICAL  
PLAN TO KILL THAN SIMPLE  
PREMEDITATION.

A CONTROLLED, SORT OF PLOTTING  
MURDER, PREARRANGED DESIGN  
BEFORE THE BEFORE THE CRIME IS  
COMMITTED.

>> WHY WOULD YOU THINK THAT IS  
THE NOT CASE HERE?

>> FOR TWO REASONS, YOUR HONOR.  
THERE IS NO EVIDENCE TO SUPPORT  
IT.

AND I WOULD POINT OUT THAT THE  
TRIAL JUDGE'S SENTENCING ORDER  
AND FINDINGS ALSO DON'T SUPPORT

THE CCP AGGRAVATOR.

IN HIS ORDER THE COURT STATE,  
THE COURT BASED HIS FINDING OF  
CCP ON MR. FRANKLIN'S PLAN TO,  
HIS CALLING MR. THOMAS TO HIS  
CELL TO CONFRONT HIM ABOUT THE  
ON GOING PERSONAL DISPUTE THAT  
HAD BEEN GOING ON FOR THREE OR  
FOUR DAYS.

WHEN MR. THOMAS GOT TO THE CELL,  
THERE WERE SOME WORDS SPOKEN.  
NOW FRANKLY'S ROOMMATE WAS IN  
THE CELL AND OBSERVED THIS.  
OTHER INMATES OBSERVED PARTS OF  
WHAT HAPPENED.

AND THE OTHER CORRECTIONAL  
OFFICER WHO IS UP IN THE CONTROL  
STATION OBSERVED A GREAT DEAL OF  
WHAT HAPPENED.

AND ALL OF THAT EVIDENCE SHOWED  
THAT WHEN THOMAS GOT TO  
MR. FRANKLIN'S CELL, WORDS WERE  
SPOKEN AND THEN FRANKLIN PUNCHED  
HIM IN THE FACE AND SOME SCUFFLE  
ENSUED.

AND, AFTER A FEW MOMENTS, OR  
SECONDS, THOMAS GOT UP AND HE  
LEFT THE CELL.

HE WALKED DOWN THE TOP TIER OF  
CELLS, PROBABLY SIX OR SO CELLS,  
TOOK A 90-DEGREE ANGLE.

WENT DOWN SOME STAIRS AND WAS  
HEADING OUT THE DOOR BEFORE  
FRANKLIN EVER DID ANYTHING.

AND THAT POINT--

>> HOMEMADE SHANK THAT HE USED  
AS MURDER WEAPON COME INTO PLAY?  
HE MADE THAT WHEN?

DO WE KNOW THAT?

>> HE, THE EVIDENCE SHOWS THAT  
HE HAD OBTAINED THE SHANK ABOUT  
FOUR MONTHS EARLIER.

AND THIS DISPUTE HAD JUST BEEN  
GOING ON FOR ABOUT THREE OR FOUR  
DAYS.

NOW NO ONE, THE SHANK, THE,  
THERE WAS NO KNIFE.

HE DID NOT CONFRONT MR. THOMAS  
WITH THE SHANK IN THE CELL.

THE ROOMMATE SAID HE DIDN'T SEE

A SHANK.  
HE NEVER SAW A SHANK BEFOREHAND.  
HE DIDN'T RETRIEVE THE SHANK.  
HE SAID HE RETRIEVED IT FROM  
UNDER THE DOOR.  
THAT IS WHERE HE KEPT IT.  
AND PLACED A HANDLE ON IT WHICH  
HE KEPT IN HIS LOCKER BECAUSE IT  
CAN'T, CAN'T GO UNDER THE DOOR  
WITH A HANDLE ON IT.  
HE DID THAT.  
>> SO HE RETRIEVED IT--  
>> AFTER MR. THOMAS--  
>> STOOD OUT IN MANNER YOU COULD  
USE IT AND FOLLOWED THE OFFICER?  
>> WELL, HE, I RETRIEVED IT.  
BY THE TIME HE LEFT HIS CELL  
THOUGH, MR. THOMAS WAS OUT OF  
SIGHT.  
HE HAD ALREADY GONE DOWN THE  
STAIRS AND WAS EITHER AT THE  
EXIT DOOR OR GOING OUT THE DOOR.  
THAT IS BY THE TESTIMONY OF, I  
THINK AT LEAST--  
>> THERE IS NO QUESTION THAT HE  
WENT AFTER HIM AND STABBED HIM  
TO DEATH.  
ISN'T THAT RIGHT?  
HE WASN'T JUST OUT ON A STROLL.  
>> YOUR HONOR, WE'RE LOOKING AT  
INTENT.  
SO THE ISSUE IS, WHEN HE LEFT  
HIS CELL, WAS HE GOING TO KILL  
MR. THOMAS.  
AND WHAT I'M ARGUING THE  
EVIDENCE DOES NOT SHOW HE HAD  
ANY INTENT TO KILL MR. THOMAS AT  
THAT POINT.  
HE--  
>> THE LURE THAT GOT THE OFFICER  
TO HIS CELL BEGAN WITH MORE THAN  
JUST HIM CALLING HIM ON THE  
INTERCOM.  
SET UP SOMETHING IN THE  
AIR-CONDITIONING DUCT SYSTEM  
THAT WOULD MAKE WATER DRIP OR  
SOMETHING, WASN'T THAT CORRECT.  
>> THAT IS NOT CLEAR.  
HE AND HIS ROOMMATE, AS MANY  
INMATES WOULD PUT SOMETHING

ABOVE IT BECAUSE THEY WERE  
FREEZING ALL THE TIME.  
>> TO BLOCK COLD AIR FROM COMING  
IN.  
SO HE PUT, I THINK HE PUT THE  
CARDBOARD, EITHER COMPLETELY ON  
THERE OR DIDN'T PUT IT THERE AT  
ALL.  
SO THAT THERE WILL BE WATER  
DRIPPING THAT WOULD CAUSE THE  
OFFICER TO GO OVER THERE TO  
CHECK IT OUT.  
>> YES.  
WE'RE NOT, WE'RE NOT DISPUTING  
THAT HE CALLED THE OFFICER.  
>> YEAH, BUT THAT IS MORE OF AN  
EXTENSIVE LURE THAN JUST CALLING  
HIM ON INTERCOM, CAN YOU COME  
OVER HERE TO CHECK THIS.  
>> WE'RE NOT DISPUTING HE DIDN'T  
HAVE A PLAN TO CONFRONT THE  
OFFICER IN HIS CELL.  
WHAT WE'RE ARGUING IS, THAT PLAN  
WAS NOT A PLAN TO KILL.  
THE REASON IT WASN'T, IS HE  
DIDN'T KILL HIM.  
HE HAD OPPORTUNITY.  
HE DIDN'T HAVE THE KNIFE ON HIM.  
HE DIDN'T EVEN HAVE THE KNIFE  
HANDY AND HE DIDN'T USE THE  
KNIFE.  
THERE WAS NO ATTEMPT TO KILL HIM  
AND THERE WAS--  
>> IN THE CELL.  
>> YES.  
HE WAS IN THIS THE VERY SMALL  
CELL IF HE COULD HAVE DONE IT IF  
THAT WAS HIS PLAN.  
HE DIDN'T.  
HE APPARENTLY GOT--  
>> HE OBVIOUSLY HAD SOME PLAN  
BECAUSE HE PICKED, THE MAN, YOU  
YOURSELF HAVE SAID, THAT THE  
OFFICER HAS NOW LEFT THE CELL?  
>> YES.  
>> HAS GONE DOWN THE STEPS.  
>> YES.  
>> HE NOW, OUTFITS HIMSELF WITH  
THIS HOMEMADE SHANK.  
FOLLOWS THE OFFICER.

STABS HIM.  
GETS THROUGH THIS LITTLE DOOR.  
AND CONTINUES TO STAB HIM.  
AS HE IS TRYING TO GET THROUGH  
THE SECOND DOOR.  
HE CONTINUES TO STAB HIM.  
SO, WHY ISN'T ALL THAT, ALL  
THOSE CIRCUMSTANCES LEAD TO--  
>> JUSTICE QUINCE, BECAUSE WE  
HAVE A REASONABLE HYPOTHESIS IT  
OCCURRED DIFFERENTLY.  
MR. FRANKLIN TESTIFIED, AT THE  
GUILT PHASE OF HIS TRIAL, HIS  
TESTIMONY WAS NOT IMPEACHED IN  
ANY WAY.  
WHAT HE SAID, NOW THIS IS A MAN,  
WHO HAS BEEN IN PRISON SINCE HE  
WAS 19 YEARS OLD.  
OKAY?  
HE HAS GOT A 73 I.Q.  
HE HAS GOT BRAIN DAMAGE.  
HE HAS BEEN IN PRISON.  
WHAT HE SAYS IS, HE LEFT HIS  
CELL BECAUSE HE DIDN'T WANT TO  
BE ALONE IN HIS CELL WHEN THE  
GUARDS CAME.  
HE KNEW HE HAD JUST COMMITTED AN  
INFRACTION.  
HE JUST PUNCHED A CORRECTIONAL  
OFFICER.  
HE WILL LEAVE THE CELL.  
HE DOESN'T WANT TO BE IN THE  
CELL.  
>> LEAVE THE CELL WITH A SHANK.  
>> HE KNOWS THEY'RE COMING.  
HE GETS THE KNIFE.  
PREPARES IT FOR PROTECTION TO  
USE AS NEGOTIATING TOOL TO KEEP  
THEM AT BAY UNTIL HE CAN COME TO  
TERMS WITH HIM.  
WHICH IN FACT EXACTLY WHAT HE  
DID LATER, AFTER THE STABBING  
OCCURRED.  
SO HE GOES OUT.  
THOMAS IS GONE.  
THERE IS NO REASON HE WOULD  
BELIEVE THAT HE COULD EVER CATCH  
THOMAS OR SEE THOMAS AGAIN.  
HE GETS DOWN THE STAIRS.  
THERE IS A CROWD OF PEOPLE IN

THERE AT THIS TIME.  
THE CORRECTIONAL OFFICER FROM  
CONTROL STATION, HE SAYS, HE  
SEES THOMAS GOING ALONG THE  
WALKWAY, DOWN THE STAIRS.  
HE DOESN'T SEE FRANKLIN COME  
UNTIL HE IS ALREADY OUT THE  
DOOR, OR, CLOSE TO THE DOOR, OUT  
THE DOOR.  
THAT IS VERIFIED BY THREE OTHER  
INMATES.  
NOW FRANKLIN IS DOWNSTAIRS.  
HE IS STANDING THERE.  
HE SEES THOMAS OUT IN THE  
HALLWAY OR THE SALLY PORT AREA  
AND HE, HE GOES AFTER HIM.  
HE DOES FOLLOW HIM.  
HE PULLS THE DOOR OPEN.  
HE GOES AFTER HIM.  
WHY?  
HE SAYS, WHY I WAS GOING TO  
CHASE HIM OFF DOWN THE BLOCK.  
HE NEVER HAD A PLAN TO KILL  
MR. THOMAS.  
>> HE WAS GOING TO DO WHAT?  
>> CHASE HIM OFF DOWN THE BLOCK.  
>> AND, DO THAT, THAT INVOLVED  
USING THE SHANK AND STABBING  
HIM.  
>> NO.  
HE JUST HAD THE SHANK BECAUSE HE  
HAD TAKEN THAT OUT, FOR OTHER  
REASONS.  
AND HE SAYS, MR. THOMAS IS  
STANDING BY THE DOOR, LIKE, YOU  
KNOW, NOTHING HAD REALLY  
HAPPENED.  
AND THEY, HE, HE CHASES HIM DOWN  
THE HALLWAY.  
HE GETS TO THE DOOR.  
THOMAS GETS INSIDE OF DOOR.  
HE IS PUTTING IT SHUT.  
FRANKLIN GETS FOOT IN THE DOOR.  
THAT IS ARE WITH THE STRUGGLE  
COMES.  
THAT IS THE FIRST TIME HE USES  
THE SHANK.  
HE HITS HIM MOSTLY IN THE HANDS  
AND ARMS, BUT UNFORTUNATELY  
SEVERAL OF STAB WOUNDS, THERE IS

ONE LETHAL WOUND GOES INTO HIS NECK AS THEY'RE STRUGGLING OVER THE DOOR.

>> MAYBE I'M GOING TO JUMP THE GUN HERE SO TO SPEAK BUT, HERE IS A DEFENDANT WHO IS SERVING A LIFE SENTENCE FOR MURDER.

>> YES.

>> SO, WE'VE GOT PROBABLY, EVERYBODY SAYS, WHAT IS THE MOST WEIGHTY AGGRAVATOR?

THAT IS TO ME, COMMITTING A MURDER WHEN YOU'RE IN A FACILITY FOR MURDER.

AND YOU'RE, YOU ARE KILLING A, YOU DISPUTE, SHOULD BE A LAW ENFORCEMENT OFFICER BUT LET'S ASSUME WE DISAGREE, THAT THIS IS A LAW ENFORCEMENT OFFICER.

YOU STAB THEM.

HOW, I MEAN, IF IT'S NOT CCP, HOW DOES IT MATTER IN THE ULTIMATE LOOK AT WHETHER THIS, ISN'T IT, JUST LET'S ASSUME YOU'RE RIGHT ON CCP.

WHICH I, I DON'T AGREE WITH YOU. BUT, HOW IS THAT EVEN REMOTELY HARMFUL TO THE IMPOSITION OF THE DEATH SENTENCE?

>> WELL, WE DIDN'T RAISE PROPORTIONALITY BUT THE REASON IT'S RELEVANT IS BECAUSE, DESPITE THAT, DESPITE THE PRIOR MURDER, WE HAVE THREE JURORS WHO VOTED FOR LIFE.

THEY WERE INSTRUCTED ON ALL THESE OTHER AGGRAVATORS WHICH WE HAVE CONTENDED ARE IMPROPER.

SO IF THE COURT WERE TO AGREE WITH US ON ONE OR MORE OF THESE AGGRAVATORS, THE LEO AGGRAVATOR, THE HINDER DISRUPT OR CCP OR SEVERAL OF THEM, I THINK THE COURT WOULD HAVE TO REMAND FOR A NEW PENALTY PHASE BECAUSE THERE IS, I DON'T THINK THERE IS ANY WAY TO TELL WHETHER THOSE INSTRUCTIONS, IMPROPER INSTRUCTIONS WOULD HAVE AFFECTED THE JURY'S VERDICT.

>> BUT THAT'S, THAT IS SORT OF HARMLESS ERROR ANALYSIS WE DON'T EMPLOY.

I MEAN, BECAUSE YOU'RE SAYING IT IS KIND OF AN AUTOMATIC.

ONCE WE KNOCK THAT OUT, THERE IS NO WAY TO TELL, THEREFORE, WE CAN'T SAY THAT THE ERROR WOULD BE HARMLESS?

>> CORRECT.

>> OKAY.

THAT IS NOT HOW WE DO THAT IS IT?

>> I BELIEVE IT IS, YOUR HONOR. IN EVERY SINGLE CASE WHERE IMPROPER INSTRUCTIONS ARE GIVEN ON AGGRAVATORS.

I THINK I SHOULD GO TO THE OTHER TWO AGGRAVATORS.

HINDER DISRUPT.

THIS AGGRAVATOR APPLIES WHEN A MURDER WAS COMMITTED FOR THE PURPOSE--

>> ADJUST YOUR MIC A LITTLE BIT.

>> CLOSER?

>> YES.

>> OKAY.

THANK YOU.

YES.

THIS AGGRAVATOR APPLIES WHEN THE MURDER WAS COMMITTED FOR THE PURPOSE OF HINDERING OR DISRUPTING THE LAWFUL EXERCISE OF ANY GOVERNMENTAL FUNCTION OR THE ENFORCEMENT OF LAWS, AND THAT IS NOT WHAT OCCURRED HERE.

IT IS CLEAR AGAIN, FROM THE FACTS THAT THIS WAS A PERSONAL BEEF THAT FRANKLIN AND THOMAS HAD BEEN ENGAGING IN FOR THREE OR FOUR DAYS.

IT -- IT BEGAN WHEN SERGEANT THOMAS SAID TO FRANKLIN, I THINK HE SAID, YOU DUMB ASS, CLOSE THE MOTHER-F DOOR.

FRANKLY SAID, AS INMATES WE'RE NOT SUPPOSED TO TOUCH THE SECURITY MEASURES.

HE CLOSED THE DOOR.

LATER THAT DAY HE WENT TO TALK

TO FRANKLIN, I MEAN TO THOMAS,  
AND HE SAID, YOU DON'T HAVE TO  
TALK TO ME THAT WAY.

I WILL DO WHAT YOU ASK ME TO DO.  
AND THEN IT EVOLVED FROM THAT  
INTO CUSSING MATCHES AND THOMAS  
REQUIRING FRANKLIN TO CLOSE THE  
GATE, YOU KNOW, HOLD THE GATE,  
FOR ALL THE INMATES TO GO  
THROUGH WHEN THEY WENT TO CHOW  
OR ANYWHERE ELSE.

>> LET ME ASK, ASK YOU THIS.  
THIS DISRUPT OR HINDER, WAS  
MERGED WITH OR PUT TOGETHER WITH  
HIM BEING A LAW ENFORCEMENT  
OFFICER, CORRECT?

>> CORRECT.

>> SO, YOU ALSO ARGUING THAT HE  
WAS NOT A LAW ENFORCEMENT  
OFFICER?

>> CORRECT.

>> WHY NOT?

>> WELL, BECAUSE, THE AGGRAVATOR  
APPLIES TO LAW ENFORCEMENT  
OFFICERS NOT CORRECTIONAL  
OFFICERS.

AND, YOU LOOK AT PLAIN MEANING,  
AND AT BEST YOU GET, WELL, PLAIN  
MEANING PROBABLY REFERS TO LAW  
ENFORCEMENT OFFICER, SOMEONE WHO  
HAS VESTED WITH THE AUTHORITY OF  
ARREST AND WHOSE JOB IT IS TO  
ENFORCE AND PROTECT THE LAW,  
ENFORCE AND PREVENT AND PROTECT  
LAWS AND CORRECTIONAL OFFICERS  
ARE COMPLETELY DIFFERENT CLASS  
OF INDIVIDUALS.

AND EVEN IF, YOU LOOK AT FLORIDA  
STATUTES, AND THAT IS EXACT SAME  
SITUATION HAVE.

YOU HAVE, THEY'RE SEPARATELY  
DEFINED AS TWO--

>> HAVE WE, HAVE WE SAID THAT?  
OR HAVE WE USED THIS AGGRAVATOR  
FOR CORRECTIONAL OFFICERS.

>> THIS COURT HAS NOT ADDRESSED  
THAT ISSUE.

THE TRIAL JUDGES, I FOUND THREE  
CASES WHERE TRIAL JUDGES HAD  
FOUND THE AGGRAVATOR, WHERE THE

VICTIM WAS A CORRECTIONAL OFFICER.  
BUT THAT ISSUE NEVER CAME TO THIS COURT.  
PROBABLY BECAUSE, THE AGGRAVATOR WAS MERGED WITH SOMETHING ELSE. THIS COURT HAS NEVER ADDRESSED ISSUE.  
IT IS ISSUE OF FIRST IMPRESSION.  
>> BUT IT HAS BEEN FOUND AND NOT STRICKEN IN CASES INVOLVING CORRECTIONAL OFFICERS, RIGHT?  
>> THE COURT HAS NEVER ADDRESSED IT.  
IT HAS NEVER COME TO THIS COURT. IT HAS NEVER BEEN APPEALED TO THIS COURT.  
AND IF YOU LOOK AT--  
>> I'M, YOU KNOW, ISN'T THERE SORT OF BROAD MEANING OF LAW ENFORCEMENT OFFICERS?  
I MEAN, IS IT, ARE YOU SAYING THAT IT IS JUST APPLICABLE TO POLICE OFFICERS?  
>> I THINK IT'S, I THINK THE APPROPRIATE DEFINITION IS THE ONE FOUND IN 843.10.  
THAT'S THE DEFINITION THAT THIS COURT HAS CALLED THE KEY DEFINITION.  
THAT'S THE DEFINITION THAT IS REFERRED TO BY NUMEROUS OTHER STATUTES THAT ADDRESS VARIOUS THINGS ABOUT LAW ENFORCEMENT OFFICERS.  
AND APART FROM THAT, AND A FEW STATUTES, WHERE LAW ENFORCEMENT OFFICER IS SAID TO INCLUDE, A LARGER NUMBER OF CLASSES OF INDIVIDUALS THE STATUTE HAS EXPRESSLY SAID SO.  
IN OTHER WORDS, LIKE IN THE ASSAULT AND BATTERY ON A LAW ENFORCEMENT OFFICER, THERE IS, IT IS 784.07.  
ASSAULT AND BATTERY OF LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, EMERGENCY MEDICAL CARE PROVIDERS, ETCETERA, THERE IS A SPECIFIC DEFINITION THERE

AND THEY SAY, HERE, THE TERM,  
LAW ENFORCEMENT OFFICER INCLUDES  
A LAW ENFORCEMENT OFFICER, A  
CORRECTIONAL OFFICER, A  
CORRECTIONAL PROBATION OFFICER,  
ETCETERA, AS THOSE TERMS ARE  
DEFINED IN 943.10.

SO THE 943.10 DEFINITION OF EACH  
OF THOSE CLASSES IS USED  
THROUGHOUT THE STATUTES.

SO I THINK YOU HAVE TO, YOU  
WOULD HAVE TO ASSUME THAT IF THE  
LEGISLATURE INTENDED MORE THAN A  
NARROW DEFINITION THEY WOULD  
HAVE SAID SO IN THE AGGRAVATING  
CIRCUMSTANCES.

SO JUST TO GO BACK TO THE HINDER  
DISRUPT AGGRAVATOR, THIS  
AGGRAVATOR ACTUALLY APPARENTLY  
WAS ORIGINALLY INTENDED TO APPLY  
TO ASSASSINATIONS AND TERRORIST  
ACTS.

IT HAS BEEN USED, WHEN A  
DEFENDANT HAS AVOIDED ARREST OR  
STATE CUSTODY.

THERE WAS ANOTHER CASE WHERE THE  
DEFENDANT KILLED HIS PAROLE  
OFFICER.

THE PAROLE OFFICER HAD BEEN  
CHARGED WITH HIS PAROLE AND WAS  
STILL IN CHARGE OF HIS PAROLE.  
SO IN THOSE CASES, THE KILLING  
ITSELF WAS FOR THE PURPOSE OF  
DISRUPTING SOME GOVERNMENTAL  
FUNCTION.

THAT IS NOT THE CASE HERE.  
FRANKLIN WAS NOT TRYING TO  
DO ANYTHING.

HE DIDN'T, HE DIDN'T CONFRONT  
THOMAS AND THEN, IT ESCALATED.

>> HOW MANY OFFICERS WERE ON  
DUTY AT THE TIME THIS INCIDENT  
HAPPENED, IN THAT PARTICULAR  
POD?

>> THERE ARE TWO OFFICERS IN THE  
CONTROL TOWER.

>> TWO.

SO HE DISTRACTS ONE, AND KILLS  
HIM.

THAT DOESN'T DISRUPT THE--

>> IT HAS TO BE FOR THE PURPOSE OF DISRUPTING.  
IN THIS CASE THERE IS A LOT OF DISRUPTION.  
BUT THAT IS NOT, THAT WAS NOT FRANKLIN'S MOTIVE.  
AND I THINK EVEN THE TRIAL JUDGE BELOW RECOGNIZED THAT.  
AS DID THE STATE IN THIS CASE. THE ISSUE HERE IS WHAT WAS HIS MOTIVE.  
HIS MOTIVE, THIS IS A PERSONAL BEEF.  
THIS MAN WAS, TREATING HIM IN A HUMILIATING WAY.  
>> YOU MENTIONED PAROLE OFFICER CASE WAS, IN THAT CASE, WHERE THEY TREATED THE SAME IN THE LAW ENFORCEMENT OFFICER?  
>> WAS THE LEO AGGRAVATOR FOUND IN THIS CASE?  
>> YES.  
>> I DON'T, I DON'T RECALL. IT WAS NOT DISCUSSED.  
>> OKAY.  
>> WAS THAT TWO DIFFERENT ISSUES.  
ONE IS WHETHER--  
>> TWO DIFFERENT ISSUES.  
>> ONE IS WHETHER LEGALLY IS A LEO--  
>> PURE ISSUE OF LAW, YES.  
>> AND YOU'RE CONTESTING THAT AS TO A PRISON GUARDS?  
>> RIGHT.  
CORRECTIONAL OFFICERS.  
>> AS TO THE, THOUGH HIS INTENT, IS THAT, HAVE WE INTERPRETED THE, IF HIS INTENT WAS NOT TO DISRUPT THE LAWFUL PERFORMANCE OF HIS DUTY, LIKE MIGHT BE IF SOMEBODY APPROACHES A CAR AND THEN THEY ARE, THEY SHOOT THE POLICE OFFICER ABOUT TO ARREST THEM.  
>> RIGHT.  
>> YOU WOULD AGREE THAT IS DISRUPTION.  
>> YES.  
>> IS THE INTENT FOUND FROM THE

POINT OF VIEW FROM THE DEFENDANT  
OR WHAT EFFECT IT HAS, LIKE ON  
MORE OF AN HAC THING?

WHAT EFFECT IT HAS ON THE  
INSTITUTION?

BECAUSE, I MEAN FRANKLY, IF  
SOMEBODY IS ABLE TO, AGAIN,  
THEY'RE NOT GETTING AWAY WITH  
MURDER, BUT, BOY THE DEATH  
PENALTY, IT, I MEAN THAT IS ONE  
OF THE MOST, HAS TO BE ONE OF  
THE MOST DANGEROUS JOBS TO HAVE,  
A CORRECTION OFFICER.

SO, WHAT IS WRONG WITH LOOKING  
AT THE EFFECT OF THESE SHOOTING,  
OR STABBING ON THE  
ADMINISTRATION OF SAFETY IN THAT  
INSTITUTION?

>> WELL, BECAUSE WE'RE  
INTERPRETING A STATUTE AND BY  
ITS PLAIN LANGUAGE IT SAYS IT  
WAS COMMITTED TO DISRUPT OR  
HINDER.

SO.

SO THAT GOES TO PURPOSE.

>> HAVE WE TALKED ABOUT THE ON  
PART OF THE DEFENDANT AS OPPOSED  
TO EFFECT.

>> YES.

>> WE HAVE DONE THAT?  
WHICH CASE SAID THAT?

>> THERE HAS NEVER BEEN A CASE  
WHERE THE COURT HASN'T LOOKED,  
THERE IS, THERE IS SOME LANGUAGE  
IN A CASE THAT SAYS ALL THAT IS  
SUFFICIENT IS THAT THE VICTIM BE  
IN PERFORMANCE OF HIS DUTIES BUT  
THERE HAS NEVER BEEN A HOLDING  
THAT APPLIES THIS AGGRAVATING  
FACTOR JUST BECAUSE THINGS GOT,  
GOVERNMENT FUNCTION WAS  
DISRUPTED.

YOU'VE ALWAYS LOOKED AT INTENT.  
EVEN THE JONES CASE, IN THE  
JONES CASE, IT WAS A CASE WHERE  
THE DEFENDANT KILLED A POLICE  
OFFICER.

HE WAS A RANDOM COP.

HE DIDN'T KNOW HIM.

HE WAS SITTING IN HIS CAR IN

INTERSECTION.

THE DEFENDANT SHOT AND KILLED A  
POLICE OFFICER.

HINDER AND DISRUPT WAS FOUND  
THERE BECAUSE HE KILLED SOMEONE  
IN THE PERFORMANCE, HE WAS ON  
DUTY.

BUT IN THAT CASE, THE MOTIVE WAS  
FOUND, THE DEFENDANT HAD BEEN  
ARRESTED A WEEK EARLIER AND HE,  
HE SAID

"I'M GONNA KILL A PIG."

AND SO HE DID IT.

AND SO THE PURPOSE THERE WAS, IT  
WASN'T PERSONAL AT ALL.

HE DIDN'T KNOW THIS OFFICER.

IT WAS TO HINDER LAW  
ENFORCEMENT.

HE CHOSE A COP TO KILL.

THAT'S LIKE THE POLITICAL  
ASSASSINATION OR A TERRORIST ACT  
WHERE THE DESIGN IS TO DISRUPT  
THE FUNCTION OF THE GOVERNMENT.  
IN THIS CASE, THAT WAS NOT TRUE  
AT ALL.

THERE WAS NO RULE THAT HAD BEEN  
IMPOSED ON HIM BY MR. THOMAS  
THAT HE WAS DISOBEYING.

HE WAS FOLLOWING ALL THE RULES.

>> WASN'T THE CORRECTIONAL  
OFFICER AS PART OF THIS EVENT  
CLOSING OFF, SECURING THE AREA  
WHERE THE DEFENDANT WAS OR HAD  
BEEN?

ISN'T THAT-- THE DEFENDANT PUT  
HIS FOOT IN THE DOOR TO KEEP HIM  
FROM CLOSING THE DOOR.

>> HE WAS TRYING TO KEEP HIM  
FROM--

>> CLOSING THE DOOR.

>> YES.

>> AND THE CLOSING OF THE DOOR  
WAS SECURING THE QUAD WHERE THAT  
DEFENDANT WAS LOCATED, CORRECT?

>> THAT'S CORRECT.

>> SO WHY WOULD THAT NOT BE, HIS  
JOB IS TO SECURE PRISONERS, AND  
THE DEFENDANT STABBED HIM WHILE  
HE WAS TRYING TO SECURE THE  
LAWYER--

>> BECAUSE THAT WASN'T THE MOTIVE.

>> WELL, IN PHILLIPS V--  
[INAUDIBLE]

WE REJECTED THAT AS BEING MERITLESS, THE CLAIM THAT DISRUPTIVE AGGRAVATOR --  
[INAUDIBLE]

THE MURDER OF A PAROLE OFFICER WAS TO PREVENT A GOVERNMENT FUNCTION OR ENFORCEMENT OF LAWS? DIDN'T WE REJECT THAT IN THAT CASE?

WE DON'T HAVE TO SHOW THAT WAS HIS SOLE MOTIVE?

>> I DON'T BELIEVE THE COURT HAS ADDRESSED SOLE MOTIVE VERSUS ONE MOTIVE.

>> THE TRIAL COURT WENT THROUGH--

>> I DON'T BELIEVE THIS COURT HAS.

>> PAGES 4-6 OF THE SENTENCING ORDER WENT THROUGH TWO PAGES OF FACTS THAT RELATED TO THE DISRUPTION OF THE GOVERNMENTAL FUNCTION.

SHOULDN'T THOSE FACTS BE CONSIDERED IN DETERMINING THE INTENT OF THE DISRUPTION?

>> NO, YOUR HONOR.  
INTENT IS WHAT'S IN THE DEFENDANT HEAD.  
IT'S--

>> WELL, HOW IS ANYBODY GOING TO KNOW THAT EXCEPT BY HIS ACTIONS?

>> WE KNOW IT BY HIS TESTIMONY.  
WE KNOW, WE KNOW WHAT THIS DISPUTE WAS ABOUT.

AND WHEN THE COURT HAS A COUPLE OF POSSIBLE REASONS, REASONABLE HYPOTHESIS OF WHAT OCCURRED, YOU CAN'T JUST PICK THE ONE YOU LIKE.

YOU KNOW, IF HIS HYPOTHESIS IS REASONABLE, AND I THINK IT'S VERY REASONABLE--

>> IT'S REASONABLE THAT HE FOLLOWED THIS MAN--

>> YES.

>>-- DOWN THE STEPS, BUT HE HAD NO INTENT TO--  
>> HE DIDN'T FOLLOW HIM DOWN THE STEPS.  
MR. THOMAS WAS ALREADY DOWN THE STEPS.  
>> NO.  
HE CAME DOWN AFTER MR. THOMAS.  
>> YES.  
>> THAT IS--  
>> HE LEFT--  
>>-- HE FOLLOWED MR. THOMAS DOWN THE STEPS.  
IT MAY NOT HAVE BEEN ON HIS HEELS, BUT HE CAME DOWN, FOLLOWED HIM DOWN THE STEPS.  
WHAT WAS THAT PURPOSE?  
>> HIS PURPOSE FOR LEAVING HIS CELL WAS--  
>> NO, THE PURPOSE OF GOING DOWN THE STEPS AFTER MR. THOMAS.  
WHAT WAS THAT PURPOSE?  
>> HIS PURPOSE WAS TO BE AMONG THE INMATES WHEN THE GUARDS CAME TO GET HIM FOR PUNCHING--  
>> AND THE INMATES WERE--  
>> THEY WERE--  
>> HE WENT THROUGH THE TWO DOORS?  
THE INMATES WERE NOT IN THAT AREA, CORRECT?  
>> INMATES WERE DOWN THE STAIRS IN THE COMMUNAL AREA OF THE QUAD.  
SO HE WENT DOWN IN THE COMMUNAL AREA OF THE QUAD.  
THERE WAS A LOT OF ACTIVITY ALREADY BY THIS POINT.  
ONCE DOWN THERE HE SAW MR. THOMAS OUT IN THE HALL, AND THEN HE FOLD HIM.  
>> WHAT WAS HIS PURPOSE WHEN HE STABBED HIM IN THE DOOR?  
AS JUSTICE LEWIS POINTED OUT, WHEN HE'S KEEPING THE OFFICER FROM CLOSING THE DOOR AND STABBING HIM TO DEATH WHILE THE OFFICER IS STRUGGLING TO CLOSE THE DOOR, WHAT IS HIS PURPOSE THEN?

>> IN HIS MIND HE SAYS-- HE SAID ALL HE WAS THINKING ABOUT WAS WHUPPING HIS ASS. HE SAID, I'M THINKING I JUST PUNCHED A CORRECTIONAL OFFICER, I'M GONNA GET MY ASS WHUPPED--

>> CERTAINLY--

>> I'M IN TROUBLE.

>> THE FINDER OF FACT IS NOT BOUND BY HIS SUBJECTIVE CHARACTERIZATION OF WHAT WAS IN HIS MIND.

>> IF--

>> THE FINDER OF FACT CAN LOOK TO THE CIRCUMSTANCES AND MAKE REASONABLE INFERENCES BASED ON THE UNDISPUTED FACTUAL CIRCUMSTANCES. ISN'T THAT TRUE?

>> NO.

IF THERE'S A REASONABLE VERSION--

>> THAT'S A POSITION.

>> IF THERE'S A REPUBLICAN VERSION OF WHAT-- REASONABLE VERSION OF WHAT OCCURRED, AND I SAY, I-- MY ARGUMENT IS THAT IT'S REASONABLE. IT'S REASONABLE FOR SOMEONE LIKE MR. FRANKLIN WHO HAS A 73 IQ, HE'S THE MENTAL AGE OF A 13-YEAR-OLD, HE'S BRAIN DAMAGED, HE ACTS ON IMPULSE. THE COURT'S WELL AWARE THESE ARE ALL THE ATTRIBUTES OF SOMEONE WITH HIS CHARACTERISTICS. THIS WAS IMPULSIVE, IT WAS RASH. HE'S NOT THINKING AHEAD. HE'S THINKING I'M GOING TO CHASE HIM DOWN THE HALL. THEN HE'S THINKING, OKAY, I GOT IT. I'M GOING TO WHUP HIS ASS. THEY'RE COMING TO GET ME, THEY'RE GONNA WHUP MY ASS REALLY BAD.

>> PUT THE SHANK UNDER THE DOOR AND SEPARATE IT AND PUT IT TOGETHER AND RUN DOWN TO THIS MAN, I MEAN, THIS TAKES SOME--

HE CAN'T BE A DUMMY  
AND DO THAT.  
AND PLUS, YOU KNOW, THERE WERE,  
MR.-- THE CONTRACTION OFFICER  
WENT-- CORRECTION OFFICER WENT  
THROUGH TWO DOORS.  
THE FIRST WAS A FLATTENED DOOR,  
HE GOT THROUGH THAT AND WAS JUST  
ABOUT TO CLOSE, AND YOUR GUY GOT  
THERE, OPENED THAT DOOR AND SLID  
THROUGH THAT.  
THEN HE CAUGHT HIM THERE AND PUT  
HIS FOOT IN THERE.  
I MEAN, THIS WAS-- HIS INTENT  
HAD TO BE TO HARM THIS MAN AND  
NOT TO DO SOME NEGOTIATION WITH  
THE REST OF THE--  
>> WELL FINISH-- WELL--  
>> YOU'RE DEEP INTO YOUR  
REBUTTAL.  
YOU'RE WELCOME TO KEEP--  
>> I THINK I'VE COVERED ALL THE  
ISSUES.  
THANK YOU, YOUR HONOR.  
>> THANK YOU.  
COUNSEL?  
>> MAY IT PLEASE THE COURT,  
PATRICK DELANEY, ASSISTANT  
ATTORNEY GENERAL REPRESENTING  
THE STATE OF FLORIDA.  
THE APPELLANT, RICHARD FRANKLIN,  
WAS SERVING A LIFE SENTENCE WHEN  
HE CAREFULLY PLANNED AND CARRIED  
OUT THE MURDER OF RUBEN THOMAS  
OVER WHAT FRANKLIN DESCRIBED AS  
CHILDISH DIFFERENCES.  
>> CAN I JUST SAY AGAIN I AGREE  
THIS IS, I MEAN, I AGREE THAT'S  
WHAT HAPPENED, BUT THE CAREFUL  
PLANNING, AND MAYBE IT JUST  
DOESN'T MATTER AT ALL, BUT IF  
HIS PLAN WAS TO KILL HIM, WHY  
DIDN'T HE KILL HIM, LURE HIM  
INTO HIS CELL?  
IT WAS JUST HE AND THE  
CORRECTIONS OFFICER, WHY DIDN'T  
HE KILL HIM THEN?  
>> AND PRECISELY WHY HE DIDN'T,  
I CAN'T ANSWER.  
BUT EXACTLY LOOKING AT THE

ENTIRE SEQUENCE OF EVENTS TELLS US WHAT FRANKLIN'S MOTIVE WAS. HE LURES SERGEANT THOMAS TO HIS CELL.

THE MAINTENANCE CALL WAS FICTITIOUS.

THERE WAS NO WATER COMING OUT OF THE VENT.

AND WHAT WE KNOW IS THAT SERGEANT THOMAS ARRIVES AT THE CELL, HE'S EATING A BAG OF POTATO CHIPS.

AND THE DEFENDANT'S CELL MATE TELLS US-- CELL MATE TELLS US HE DOES NOT LOOK READY FOR A FIGHT, READY FOR A CONFRONTATION.

FRANKLIN'S IN THE BACK OF THE CELL.

SERGEANT THOMAS IS HESITANT. HE DOESN'T WANT TO GO IN BECAUSE THIS IS NOT A NORMAL RELATIONSHIP.

THIS IS A PRISON GUARD AND AN INMATE WHO HAS BEEN CONVICTED OF FIRST-DEGREE MURDER.

BUT ONCE SERGEANT THOMAS FEELS COMFORTABLE ENOUGH, HE DOES WALK INTO THAT AREA.

>> NO, I AGREE WITH ALL OF THAT AND, AGAIN, I THINK THIS IS ANY WAY YOU LOOK AT IT, YOU KNOW, I SEE THIS AS BEING AN AFFIRMANCE.

JUST SORT OF MORE THE ISSUE OF CAREFUL PLAN.

BECAUSE YOU SAID THIS WAS A CAREFUL PLAN TO KILL HIM.

IT DOESN'T, YOU KNOW, IT DOESN'T SEEM LIKE A CAREFUL PLAN.

BUT BECAUSE HE WOULD HAVE KILLED HIM IN THE--

>> WELL, WE'RE ALSO UNDER THE ASSUMPTION THAT FRANKLIN WAS NOT ARMED.

THERE IS CONFLICTING TESTIMONY IN THE RECORD THAT FRANKLIN WAS ARMED WITH THE KNIFE WHEN SERGEANT THOMAS ENTERED HIS CELL.

HIS CELL MATE SAID ONCE SERGEANT THOMAS ESCAPES AFTER THE INITIAL ENCOUNTER, FRANKLIN RUNS PAST HIM AND PULLS THE KNIFE OUT OF HIS PANTS.

>> WE DON'T HAVE AN ANSWER WHY HE DIDN'T JUST KILL HIM IN THE CELL.

>> WE DON'T.

IN THE CELL, WE DON'T.

BUT WE KNOW THAT THERE'S CONFLICTING TESTIMONY THAT HE WAS ARMED AT THAT POINT IN TIME. THAT THAT KNIFE CAME OUT OF HIS PANTS.

>> THAT'S CONTRARY TO HIS TESTIMONY.

>> CONTRARY TO HIS TESTIMONY. AND HIS ROOMMATE ALSO TESTIFIED THAT THE KNIFE WAS SO BIG THAT TO HIDE IT UNDERNEATH THE DOOR WITH THE HANDLE ATTACHED AT THAT POINT IN TIME WOULD HAVE BEEN IMPOSSIBLE--

>> THEN DID THE SHANK HAVE SOME KIND OF MECHANISM IN THE HANDLE WHERE HE COULD TIE IT TO HIS HAND SO IT WOULDN'T SLIP OUT AS HE WAS STABBING HIM?

>> MR. FRANKLIN REFERRED TO IT AS A SPEED LOADER, JUST THAT HE COULD GET THE HANDLE ON QUICKLY. I DON'T KNOW ABOUT WHETHER THERE WAS THAT ROPE AROUND SO IT WOULD NOT COME OUT.

BUT IT WAS IN TWO PIECES, THE HANDLE AND THE BLADE.

>> SO I GET THE SEQUENCE STRAIGHT, AT THE TIME THAT HE PUNCHED THE SERGEANT, AT THAT POINT IN TIME DID HE HAVE THE SHANK ON HIS PERSON?

>> WE BELIEVE SO, YES.

ACCORDING TO THE HIS CELL MATE'S TESTIMONY.

>> SO HE PUNCHES THE SERGEANT, AND THE SERGEANT'S ABLE TO QUICKLY RECOVER AND RUN OUT OF THE CELL, THAT'S CORRECT?

>> YES.

>> IS SO THE ARGUMENT COULD BE MADE THAT HE PUNCHED THE SERGEANT AND WAS IN THE PROCESS OF STABBING HIM.

ONLY THE SERGEANT RAN OUT.

>> MOST DEFINITELY.

AND WE KNOW THAT HE ALSO, FRANKLIN PROHIBITED THE SERGEANT FROM MAKING NOT ONE, BUT TWO CALLS FOR HELP.

WHEN THE STRUGGLE HAPPENS IN THE CELL, SERGEANT THOMAS GOES TO USE HIS RADIO.

THE RADIO IS KNOCKED AWAY BY FRANKLIN AND THEN HE USES HIS BODY ARMOR, IT'S LIKE A PANIC BUTTON.

THAT GETS KNOCKED AWAY AS WELL.

>> COULD YOU TELL ME, I DON'T KNOW IF THE RECORD DEMONSTRATES WHAT KIND OF TIME PERIOD WE'RE TALKING ABOUT BECAUSE MS. CAREY MAKES IT SEEM LIKE HE WAS NOT CONCERNED THAT THE OFFICER HAD LEFT HIS CELL AND GONE DOWN THE STEPS AND THAT HE SORT OF LEISURELY CAME AFTER HIM JUST TO GET INTO THE GENERAL POPULATION. BUT WHAT KIND OF TIME PERIOD ARE WE TALKING ABOUT HERE?

>> IT CAN'T BE MUCH LONGER THAN A MINUTE OR TWO.

IT'S NOT PRECISE WITHIN THE RECORD.

MULTIPLE WITNESSES.

THE WITNESS ACCOUNTS SHOW US THAT SERGEANT THOMAS MAKES IT OUT OF THE CELL AND THAT FRANKLIN FOLLOWS BEHIND HIM.

IT DOES NOT SEEM LIKE FRANKLIN WAS IMMEDIATELY ON HIS HEELS.

HE MAY HAVE BEEN A FEW PACES BEHIND, BUT IT'S NOT PRECISE AND ACCURATE.

THE DOORS HAD-- THE ROLLING DOORS HAD TO CLOSE, AND FRANKLIN DID CATCH HIM--

>> THE DOORS WERE OPENED FOR 30 SECONDS, I UNDERSTAND.

>> YES.

>> AND BY THE TIME FRANK LIP GOT THERE, IT WAS ALMOST CLOSED.

>> IT WAS ALMOST CLOSED.

>> SO THAT MEANS 24, MAYBE SECONDS--

>> LESS THAN 30 SECONDS, HE MAKES IT THROUGH AND CATCHES HIM AT THE OTHER DOOR TO THE STATION.

AND NOT TO BECOME TOO GRAPHIC WITH THE COURT, BUT ONCE FRANKLIN CATCHES SERGEANT THOMAS AND PROCEEDS TO STAB HIM, AND ONE WITNESS DID SAY HE SAW FRANKLIN STAB SERGEANT IS THOMAS MULTIPLE TIMES WITH THE KNIFE IN HIS HAND, FRANKLIN'S IMMEDIATELY FOLLOWING ACTION IS TO TURN TO ALL THE INMATES--

>> LET ME JUST ASK YOU THIS. DID THE INITIAL STABBING TAKE PLACE AT THE FIRST DOOR?

>> IT'S ALL AT THE SECOND DOOR.

>> OKAY.

>> IT'S ALL AT THE SECOND DOOR.

>> ONCE SERGEANT THOMAS-- THE FATAL BLOW HAS BEEN INFLICTED AND SERGEANT THOMAS FALLS TO GROUND, FRANKLIN TURNS AROUND AND MAKES A THROAT-SLASHING MOTION WITH HIS RIGHT HAND. THAT TELLS US HIS INTENT. HIS INTENT WAS TO STAB SERGEANT THOMAS UNTIL HE THOUGHT HE WAS DEAD.

IT WAS IMMEDIATE.

IT WAS IMMEDIATE RIGHT AFTERWARDS.

HE WOULDN'T HAVE STOPPED STABBING HIM UNTIL HE FELL, AND THAT'S EXACTLY WHAT HAPPENED.

THE TIME SEQUENCE OF EVENTS FOLLOWS WITH THIS COURT'S OPINION FROM 2006.

UNDER A SIMILAR SCENARIO WHERE THE INITIAL ENCOUNTER DID NOT INVOLVE STABBING.

IT WAS A ROBBERY.

THE VICTIMS WERE SUBDUED, AND AT THE POINT IN TIME THE VICTIMS

WERE SUBDUED, THE DEFENDANT MADE A CHOICE TO GO OBTAIN A WEAPON AND THEN PROCEED TO MURDER THE VICTIMS.

AND THIS COURT FOUND CCP IN THAT CASE.

HERE WE HAVE THE VICTIM LURING OR, I'M SORRY, WE HAVE MR. FRANKLIN LURING THE VICTIM TO HIS ULTIMATE DEMISE.

AND THEN OBTAINING A WEAPON OR IT'S EITHER ON HIS PERSON.

NO MATTER WHICH WAY YOU LOOK AT IT.

HE THEN FOLLOWS HIM OUT AND PROCEEDS TO STAB HIM UNTIL HE FALLS.

>> NOW, OPPOSING COUNSEL TELLS US THAT THE WORDS USED IN THE STATUTORY AGGRAVATING CIRCUMSTANCE IS "LAW ENFORCEMENT," AND URGES TO US THAT THERE ARE PLACES IN THE FLORIDA STATUTES WHERE THAT IS DEFINED AND THAT IF THE FLORIDA LEGISLATURE HAD INTENDED OTHERS TO BE WITHIN THIS CATEGORY, THEY COULD HAVE DONE SO.

WHAT IS YOUR VIEW WITH REGARD TO WHETHER THE CORRECTION OFFICER, PRISON GUARD IS WITHIN THAT DEFINITION AND WHY?

>> A CORRECTIONS OFFICER IS MOST CERTAINLY-- CORRECTIONS OFFICER IS MOST CERTAINLY INCLUDED WITHIN THAT DEFINITION.

>> WELL, THAT DOESN'T HELP ME.

[LAUGHTER]

WHY?

>> LAW ENFORCEMENT OFFICER IS NOT DEFINED, SO WE MUST LOOK TO OTHER STATUTES OR USE THE DOCTRINE OF--

[INAUDIBLE]

WHICH REVIEWS OTHER STATUTES OF LIKE, OF LIKE CIRCUMSTANCES TO DERIVE THE LEGISLATURE'S FULL INTENT AND MEANING.

IN THIS CASE, TWO STATUTES WITHIN THE FLORIDA CODE PUNISH

VIOLATION AGAINST LAW  
ENFORCEMENT OFFICERS-- VIOLENCE  
AGAINST LAW ENFORCEMENT  
OFFICERS.

THOSE STATUTES ARE 775.823 AND  
787, I BELIEVE, 14.

ONE IS ASSAULT AND BATTERY  
AGAINST LAW ENFORCEMENT OFFICERS  
AND THE OTHER ONE IS VIOLENCE  
AGAINST LAW ENFORCEMENT  
OFFICERS.

WITHIN EACH OF THOSE STATUTES, A  
CORRECTIONS OFFICER IS  
SPECIFICALLY INCLUDED TO THE  
SAME PROTECTIONS AS A LAW  
ENFORCEMENT OFFICER.

>> BY JUDICIAL INTERPRETATION AS  
OPPOSED TO STATUTORY DEFINITION.

>> NO, WITHIN THE STATUTE.

WITHIN THE--

>> NO, I'M SAYING IT DOES NOT  
SPECIFICALLY SAY THAT WITHIN THE  
STATUTE, BUT IT IS INTERPRETED  
TO BE INCLUDED.

>> I'M SORRY, I'M NOT  
UNDERSTANDING.

>> MY--

>> OF THE AGGRAVATING STATUTE?

>> MY QUESTION TO YOU IS WE HAVE  
AN AGGRAVATING PROVISION, A  
PROVISION THAT TELLS US WHAT AN  
AGGRAVATING FACTOR IS, AND IT  
SAYS LAW ENFORCEMENT, CORRECT?

>> CORRECT.

>> IT DOES NOT SAY PRISON GUARD,  
CORRECT?

>> CORRECT.

>> YOU'RE TELLING ME UNDER  
ANOTHER STATUTE THAT A  
CORRECTIONS OFFICER HAS BEEN  
INCLUDED FOR PURPOSES OF OTHER  
CRIMES.

>> CORRECT.

>> AND SO I THINK-- AND THEN  
YOU SAID BECAUSE THE CORRECTION  
OFFICER IS SPECIFICALLY  
INCLUDED, THAT'S WHAT YOU SAID.

>> YES.

>> AND I ASKED BY STATUTORY  
TERMS OR BY JUDICIAL

INTERPRETATION.

>> I'M SORRY.

BY STATUTORY TERMS THE--

>> WELL, WE DON'T HAVE STATUTORY TERMS HERE.

>> WE DON'T HAVE ANY TERMS. LAW ENFORCEMENT OFFICER ISN'T DEFINED AT ALL WITHIN THE AGGRAVATOR.

>> OKAY.

SO YOUR ARGUMENT IS BECAUSE ANOTHER STATUTE THAT SAYS "LAW ENFORCEMENT AND CORRECTIONAL OFFICERS," THAT A STATUTE THAT SAYS "LAW ENFORCEMENT OFFICERS" MEANS THE SAME THING?

>> SPECIFICALLY FOR VIOLENCE AGAINST LAW ENFORCEMENT OFFICERS?

YES.

>> NO.

SPECIFICALLY FOR AGGRAVATING FACTORS TO BE CONSIDERED IN APPLICATION OF THE DEATH PENALTY.

>> YES.

YES.

>> DOES THAT SEEM A LITTLE STRANGE TO YOU THAT IF-- BECAUSE, ONE, AND IT SPECIFICALLY SAYS "CORRECTION OFFICER," THAT YOU LOOK AT THAT, AND THAT ONE SAYS THAT.

YOU LOOK AT THIS ONE, IT DOES NOT SAY THAT.

IT WOULD SEEM TO ME THAT LOGIC, NORMAL LOGIC WOULD SAY IT'S NOT INCLUDED.

BECAUSE IF THEY WANTED TO INCLUDE IT, THEY KNOW HOW TO DO SO.

>> I WOULD AGREE WITH YOU, BUT I BELIEVE IT'S A LEGISLATIVE OVERSIGHT AND THAT THEY WOULD--

>> OKAY.

>>-- JUST ASSUME THAT CORRECTIONS OFFICER WOULD HAVE BEEN INCLUDED, HOWEVER, THEY DID NOT SPECIFICALLY DEFINE IT.

>> OKAY.

>> I'D LIKE TO JUST ASK YOU ABOUT THE AGGRAVATOR OF DISRUPTION OF LAWFUL-- CAN LET'S SEE.

HOW WAS IT STATED?

THAT IT'S INTERPRETATION, DISRUPTION OF A-- HOW'S THE AGGRAVATOR STATED?

>> THE DISRUPTER HINDERED THE LAWFUL PERFORMANCE OF A GOVERNMENTAL FUNCTION.

>> OKAY.

DO YOU AGREE, ALTHOUGH IT DOESN'T HAVE TO BE THE PRIME MOTE I, THAT IT HAS TO BE A MOTIVE?

>> THAT'S NOT HOW IT'S BEEN INTERPRETED BY THIS COURT.

>> IN WHAT CASE--

>> IN PHILLIPS PRIMARILY.

>> WELL, I'M READING-- I HAVE PHILLIPS IN FRONT OF ME. REYES-- REJECTED THAT IT DOESN'T HAVE TO BE THE SOLE MOTIVE, AND THE OBJECTION WASN'T MADE.

IS THAT THE-- ANY OTHER CASE?

>> I BELIEVE IN JONES IT WASN'T THE PRIMARY MOTIVE--

>> I'M NOT ASKING THE PRIMARY MOTIVE.

IT HAS TO BE A MOTIVE.

DO YOU AGREE WITH THAT?

>> I UNDERSTAND.

>> NOT THE EFFECT, BUT THE INTENT.

>> YES.

YES.

>> OKAY.

SO GIVE US, AS JUSTICE POLSTON SAID, THE JUDGE WENT INTO GREAT DETAIL.

DID HE DISCUSS THE INTENT AS OPPOSED TO THIS WASN'T JUST A REVENGE KILLING?

BECAUSE THAT'S SORT OF THE PRIMARY MOTIVE APPEARS TO BE THAT HE WAS DISSED, AND HE WAS UPSET, AND HE SAID I'M GOING TO GET THIS GUY BECAUSE HE DISSED

ME.

AND I'M GOING TO KILL HIM.  
IS THAT-- SO WHERE IS IT THAT  
HIS INTENT WAS TO DISRUPT THE  
LAWFUL GOVERNMENT FUNCTION?

>> PRIMARILY--

>> UNLESS YOU TAKE THAT ANY  
KILLING OF A CORRECTION OFFICER  
OR A LAW ENFORCEMENT OFFICER IS  
TAUNT A DISRUPTION.

IT SEEMS TO ME SINCE THAT WOULD  
JUST BE DOUBLING THAT THE  
LEGISLATURE WOULD HAVE INTENDED  
SOMETHING BEYOND JUST THAT THE  
PERP'S STATUS IS A-- PERP'S  
STATUS IS A LAW ENFORCEMENT  
OFFICER.

>> IN THIS CASE IT'S PRIMARILY  
BECAUSE SERGEANT THOMAS WAS A  
CORRECTIONAL OFFICER.  
HE WAS A CORRECTION OFFICER WHO  
WAS TASK WITH THE OVERSIGHT OF  
MR. FRANKLIN.

MR. FRANKLIN DID NOT LIKE THE  
WAY THOMAS CARRIED ON HIS  
BUSINESS.

SO HE MURDERED SERGEANT THOMAS  
BECAUSE OF HIS DUTY AS A  
CORRECTIONS OFFICER.

>> SO IN THIS SECTION IT'S JUST  
THE SAME-- I MEAN, IT WOULD  
ALWAYS BE A DOUBLING.

I MEAN, YOU WOULD HOPE IS YOU  
WOULD WANT TO INTERPRET IT IN A  
WAY LIKE WE HAVE INTERPRETED  
OTHER AGGRAVATORS, WHERE THERE'S  
SOMETHING BEYOND THE STATUS AS A  
LAW ENFORCEMENT OFFICER THAT  
ALLOWS FOR THE ADDITIONAL  
AGGRAVATOR WITHOUT IT HAVING TO  
BE DOUBLED AND THEN MERGED INTO  
ONE.

>> AND IT DOES APPEAR THAT THE  
TRIAL COURT DID SEE THAT BECAUSE  
THE LAW ENFORCEMENT OFFICER  
AGGRAVATOR WAS MERGED AND NOT  
GIVEN ANY WEIGHT.

SO IN THIS CASE I THINK THE  
TRIAL COURT DID SEE THAT--

>> SO IT ALMOST DOESN'T-- IN

THAT CASE IT DOESN'T MATTER, AND IT DOESN'T MATTER WHETHER HE'S A LAW ENFORCEMENT OFFICER BECAUSE IF YOU FIND IT WAS A DISRUPTION OF A LAWFUL GOVERNMENTAL FUNCTION.

>> YES.

YES.

FOR THE AFOREMENTIONED REASONS, THE STATE RESPECTFULLY REQUESTS THIS COURT AFFIRM MR. FRANKLIN'S CONVICTIONS AND SENTENCES.

THANK YOU.

>> THANK YOU.

REBUTTAL?

>> I JUST HAVE TWO COMMENTS WITH REGARD TO THE FACTS.

FRANKLIN'S CELL MATE TESTIFIED THAT HE DID NOT SEE THE KNEW ON FRANKLIN AT ANY TIME DURING THE PUNCHING AND THE SCUFFLE.

HE ONLY SAW THE KNIFE WHEN FRANKLIN WAS EXITING THE DOOR.

BY THAT TIME HE ACTUALLY WAS OUTSIDE IN THE HALLWAY.

SO I BELIEVE WHAT THE STATE HAS SAID IS INCORRECT.

SECONDLY, AT THE DOOR THOMAS DID NOT KEEP STABBING, ACCORDING TO THE EVIDENCE, DID NOT CONTINUE STABBING UNTIL-- I MEAN, FRANKLIN DID NOT CONTINUE STABBING THROUGH THE DOOR, THE CRACK IN THE DOOR UNTIL MR. THOMAS FELL DOWN.

ACCORDING TO THE CORRECTIONS OFFICER WHO OBSERVED IT AND ANOTHER INMATE WHO OBSERVED IT, THOMAS WAS STILL STANDING WHEN FRANKLIN RETREATED FROM THE DOOR.

FRANKLIN'S TESTIMONY WAS HE HEARD COMMOTION, HE BELIEVED THE ARMED GUARDS WERE COMING, AND HE RETREATED.

WITH REGARD TO WHETHER THOMAS DECIDED TO GO KILL, I END MEAN, FRANKLIN DECIDED TO GO KILL THOMAS WHILE HE'S UP IN HIS ROOM, THAT HE WOULD DECIDE TO GO

KILL HIM AT THAT POINT, I THINK,  
IF YOU LOOK AT ALL THE FACTS, IF  
YOU READ THE TESTIMONY OF ALL  
THE TESTIMONY INCLUDING THE  
OFFICER THAT WOULD BE THE HEIGHT  
OF ABSURDITY, THAT HE WOULD GO  
AFTER SOMEONE HE COULDN'T EVEN  
SEE AT THIS POINT AND WHO HAD  
ALREADY LEFT.

AND MY LAST POINT--

>> REALLY, I GUESS YOUR ARGUMENT  
IS IF THIS REALLY WAS CCP, HE  
WOULD HAVE ATTACKED HIM AS SOON  
AS HE CAME INTO THE CELL.

>> EXACTLY.

>> THAT WOULD SHOW THE PLAN.

>> EXACTLY.

AND AFTER THAT IT'S RASH AND  
REACTIVE AT EACH POINT.

HE'S REACTING.

IT'S IMPULSIVE.

AND I THINK HIS TESTIMONY'S  
IMPORTANT BECAUSE IT'S  
CONSISTENT WITH THE TYPE OF  
PERSON HE IS.

THE FACT THAT HE IS BORDERLINE  
INTELLECTUAL FUNCTIONING, HE IS  
BRAIN DAMAGED.

HE IS A PERP THAT'S BEEN IN  
PRISON FOR ALMOST 20 YEARS.

AND MY LAST POINT IS I DON'T  
THINK THE EVIDENCE SHOWS THAT HE  
KILLED THOMAS BECAUSE OF HIS  
OFFICIAL DUTIES.

IT WAS PURELY PERSONAL.

IF THIS HAD HAPPENED ANYWHERE  
ELSE, THE SAME THING MIGHT HAVE  
HAPPENED.

HE HAPPENED TO BE IN PRISON.

AND WITH THAT, I'D ASK THE COURT  
TO REMAND THIS CASE FOR  
RESENTENCING.

>> HE HAPPENED TO BE IN PRISON  
AS A CONVICTED FELON FOR  
FIRST-DEGREE MURDER.

>> YES.

YES.

BUT HE COULD HAVE GOTTEN IN THIS  
TYPE OF PERSONAL DISPUTE WHERE  
HE FELT HUMILIATED AND

CONFRONTED THE PERSON, TRIED TO  
TALK IT OUT, GOTTEN ANGRY, THIS  
COULD HAPPEN SOMEWHERE ELSE.

THE MOTIVE WAS NOT TO DISRUPT OR  
HINDER MR. THOMAS IN ANY OF HIS  
DUTIES OR ANYTHING ELSE ABOUT  
THE PRISON.

HE REALLY WANTED THINGS TO GO  
BACK TO THE STATUS QUO.

I WOULD JUST URGE THE COURT TO  
READ HIS TESTIMONY AND TRY TO  
ASSESS IT BASED ON WHO THIS  
PERSON IS.

NOT OUR OWN EXPERIENCE OF WHAT  
WE MIGHT DO IN THE SITUATION.

THANK YOU, YOUR HONOR.

>> THANK YOU FOR YOUR ARGUMENTS.